

SUBCONTRACT AGREEMENT

General Contractor: Construction Services
Date: September 28, 2005
Project Name: Holder Residence
Location: 926 S. Daniel Way, San Jose, Ca. 95128
Subcontractor: Dafoe Company
E.I.N or S.S.#: 552-70-1839
Address: 2426 Ruby Ave., San Jose, Ca. 95148

Contractors are required by law to be licensed and regulated by the Contractor's State License Board. Any questions concerning a contractor may be referred to the Board at: Contractor's State License Board, 9835 Goethe Road, Sacramento, CA 95827.

The undersigned, hereinafter referred to as the "subcontractor", agrees to furnish at its own expense all labor and materials necessary to complete in a good and workmanlike manner the following:

Addition and Remodeling work per plans and Prime Contract Scope of Work for the Holder Residence.

Said work to be done and materials furnished in conformity with the plans and specifications prepared by : House of Haws

1. Insurance Requirements. Subcontractor shall, at its own expense, procure and maintain insurance on its operations, with carriers that are California admitted and acceptable to the general contractor as required by the prime contract, including the following coverage:

A. Workman's Compensation & Employer's Liability Insurance
\$1,000,000 per occurrence.

B. Liability Insurance. Subcontractor shall obtain from an insurance carrier acceptable to the general contractor a policy of Commercial General Liability or Owner's and Contractor's Protective Liability insurance covering all operations by or on behalf of subcontractor, providing insurance for bodily injury liability and property damage liability for premises and operations, products and completed operations (which coverage shall remain in effect for two (2) years after completion of the Work, contractual liability, broad form property damage, which shall include, without limitation, coverage for explosion, collapse and underground hazards and personal injury liability.

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The Commercial General Liability insurance shall be the "Occurrence Coverage Form." The limit of such coverage shall be in an amount not less than One Million Dollars (\$1,000,000) each occurrence for bodily injury and property damage, and Two Million Dollars (\$2,000,000) general aggregate.

C. Name Construction Services as "additional insured cg20010 endorsement" on subcontractor's general liability insurance certificate.

D. Business automobile liability insurance in the minimum amount of \$500,000 per occurrence.

2. Subcontractor shall perform all work in a first-class and workmanlike manner and to the entire satisfaction of the Owner, General Contractor and Designer/Architect.

3. The subcontractor agrees to promptly begin the work described above as soon as notified by the General Contractor and complete the work as follows: Start work within 7 calendar days after notification by the General Contractor and complete the work described above 7 calendar days from the commencement of work. Attention is hereby directed to the fact that time is of the essence in this contract. Any penalties due to the failure of the subcontractor to complete his work in a timely and complete manner will be promptly be deducted from subcontractor's final payment.

4. Subcontractor to remain constantly on the job during the progress of its work and have a competent foreman on the job approved by the general contractor. The subcontractor shall employ sufficient workers to complete the work in the given time, except for delays caused by strike, acts of God, or other unforeseen conditions beyond the control of the subcontractor.

5. Subcontractor to pay for all building materials, supplies, sidewalks, driveways, curbs, landscaping, or underground electrical or plumbing wasted or damaged on the premises through his operations and belonging to other parties.

6. The subcontractor price set forth in this subcontract shall be deemed to be full compensation for all work, materials and supplies. Changes to the scope of work shall be commencement of any such extra work.

7. Subcontractor shall clean up and remove from the premises all of his surplus materials remaining after the performance of the work in this contract, or, if not so removed, the general contractor may remove same and charge the actual cost of removal to the subcontractor. Subcontractor shall comply with all statues and ordinances of any governmental agency or authority.

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8. Indemnification. To the fullest extent permitted by law, subcontractor shall indemnify and hold harmless Owner and General Contractor and their agents and employees from claims, demands, causes of actions and liabilities of every kind and nature whatsoever arising out of or in connection with subcontractor's operations performed under this agreement. This indemnification shall extend to claims occurring after this agreement is terminated as well as while in force. This indemnification shall apply regardless of any active and/or passive negligent act or omission caused solely by the designs provided by such parties. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this agreement. All work covered by this agreement done at the site or in preparing or delivering materials or equipment to the site shall be at the sole risk of the subcontractor until the completed work is accepted by the contractor.

9. Should the subcontractor fail to employ sufficient help to complete the work in the given time, the general contractor may, after giving forty-eight (48) hours written notice by letter or telegram mailed to the last known address of the subcontractor, employ help to complete the work and charge the same to the subcontractor's account and/or charge subcontractor any penalties due to its failure to complete the work on the given due date. If the cost to complete the work does not exceed the contract price, any excess shall be paid to the subcontractor. If the general contractor is assessed liquidated damages by the owner for failure to complete the work on time, and if the delay has been caused by the subcontractor herein, the subcontractor agrees to pay the portion of the liquidated damages caused by or attributed to his failure to complete the work on time and in accordance with the working schedule.

10. This contract shall not be assigned by subcontractor without the permission in writing from the general contractor. Subcontractor is to furnish to the general contractor and owner a one-year written guarantee covering all defects in labor and materials furnished by him unless the specifications call for a longer period of time.

11. In the event legal action is instituted by either party, the prevailing party shall be entitled to recover reasonable attorney's fees and costs from the other party.

12. **PAYMENT:** In consideration whereof, the general contractor agrees to pay to subcontractor the sum of \$195,276.00 only. Where and if hourly rates apply to this project, the hourly rates agreed to are as follows: Cost of labor and labor burden, plus 10% for overhead and profit, plus the actual cost of materials for any materials furnished. The general contractor shall have the right to withhold from the subcontractor any payments if it fails to present satisfactory evidence that all current bills for labor and materials, or other liabilities, have been paid in connection with this subcontract, and the general contractor shall be entitled to require labor and/or material releases before any payment is made.

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13. If required by this project, each request for payment must be accompanied by a proper conditional lien release for the current payment request, and an unconditional lien release for the last payment received. General contractor reserves the right to issued checks payable jointly to subcontractor and suppliers.

14. Payments may be withheld on account of (1) defective work not remedied; (2) claims filed by third parties; (3) failure of the subcontractor to make payments properly to his subcontractors or for labor, materials or equipment; (4) reasonable evidence that the work cannot be completed for the unpaid balance of the subcontracted sum; (5) damage to the general contractor or owner; (6) reasonable evidence that the work will not be completed with the contract time, and that the unpaid balance would not be adequate to cover the actual or liquidated damages for the anticipated delay; and (7) persistent failure to carry out the work in accordance with the contract documents.

15. No payment made under this contract shall operate as an acceptance of any portion of subcontractor's work or as an admission on the general contractor's part that this contract or any portion of it, has been complied with, if the facts shall be otherwise.

16. All sums received by subcontractor from the general contractor under this agreement will be held in trust by subcontractor for the express use and purpose of paying in full for all labor, materials, equipment and appliances furnished to subcontractor in the performance of this agreement, and if required, making payments to labor union trust funds established pursuant to a collective bargaining agreement. No title to any payment or any part of it, shall vest in subcontractor or be used for any other purpose until subcontractor has first paid in full for all such labor, materials, equipment and appliances furnished by that date to subcontractor.

ACCEPTANCE

Subcontractor:

Printed Name & Title:


Date of Acceptance:


Hal Flanders, Owner

September 28, 2005

By:

Date of Acceptance:


September 28, 2005

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